ORIGINAL

No. 83-163

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

JOHN M. SYRIA, DIRECTOR, DIVISION OF SOCIAL SERVICES, NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES, ET AL., PETITIONERS,

v.

CLARA ALEXANDER, ET AL., RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. WHETHER THE DISTRICT COURT EXCEEDED ITS BROAD EQUITABLE POWERS IN ORDERING REMEDIAL FINES TO ENSURE FUTURE COMPLIANCE WITH ITS ORDERS.

II. WHETHER PETITIONERS WERE BOUND TO OBEY THE DISTRICT COURT'S INJUNCTION THAT REQUIRED THEM TO PROVIDE AFDC AND MEDICAID TO ALL ELIGIBLE INDIVIDUALS WITH REASONABLE PROMPTNESS.

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Respondents, Clara Alexander and Carmen Nelson Roddey, on behalf of themselves and all others similarly situated, respectfully request that this Court deny the petition for a writ of certiorari seeking review of the Fourth Circuit Court of Appeals' judgment in this case, as reported at 707 F.2d 780.

STATEMENT OF THE CASE

A. Preface

The Petitioners have attempted to characterize this case as involving the imposition of remedial fines against state officials who were not found "in contempt" of the district court's orders. Further, Petitioners complain that the district and circuit courts have misconstrued the unequivocal requirement of the Social Security Act that Aid to Families With Dependent Children (AFDC) and Medical Assistance (Medicaid or MA) be provided to all eligible individuals with reasonable promptness. The applicable federal regulations that have governed the AFDC and Medicaid programs throughout the history of the litigation have precisely defined reasonable promptness as within 45 days of the date of application unless the claim is grounded in a disability, in which case 60 days is allowed. The record shows further that for over eight years Petitioners have been continuously in violation of these clear requirements and have been repeatedly ordered to comply with them. Petitioners never appealed from any of these previous orders that construed the law to require their prompt processing of applications for all eligible individuals (except where Petitioners were not at fault, which cases were classified as pending "with good cause").

The distinguishing feature of the order complained of in the Petition (Petition, App. B) is that it provided remedial fines as a new incentive for Petitioners to comply with the law and the court's orders which had been flouted with impunity for eight years. Petitioners have never contended -- in the district court, the court of appeals, or even in this petition -- that they were not in violation of the court's injunction of March 30, 1979.[1]

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[1]The injunction was signed on March 30 but filed on April 3, 1979, and is referred to with the latter date in the district court's order complained of in the Petition (Pet. App. B, A-15, para. 3).

(Joint App., 50-55).[2] Rather, Petitioners rest their whole belated plea on the fact that the district court was kind enough to omit the word "contempt" when the court clearly found them in violation of the court's orders. Petitioners have masked their semantic argument in terms of an abuse of equitable powers and a confused grab for the Eleventh Amendment but have not cited one apposite authority from any jurisdiction to support their plea.

In a desperate attempt to catch this Court's attention, Petitioners have claimed that there is a serious conflict in the circuit courts over the processing requirement of the pertinent section of the Social Security Act, as interpreted by the regulations. This argument is a product of Petitioners' imagination or misreading of the cases.

As Respondents will demonstrate briefly below, every district and circuit court that has squarely ruled on the issue has done so in agreement with the district court and Fourth Circuit Court of Appeals in this case.

B. HISTORY OF THE CASE

The original complaint was filed on August 28, 1974, by Respondents Clara Alexander, Carmen Nelson (Roddey) and others. It was replaced by an amended complaint on January 29, 1975 (Joint App., 1-25). Clara Alexander had been forced to wait one hundred (100) days from the date of her application before Petitioners' agents found her eligible for AFDC and Medicaid. Id. During that period, which was more than twice the 45-day allowance under the federal regulations, she and her children were threatened with eviction and survived only by the generosity of friends and neighbors. Id.

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[2]The Joint Appendix from the Fourth Circuit contains the copy of the injunction, the previous orders of the district court, the Respondents' motion for further relief (upon which the order of the court of November 4, 1982, complained of in the Petition, is based), the transcript of the hearing, and other vital documents omitted from the Petition.

The court certified the class action against Petitioners for declaratory and injunctive relief on behalf of all applicants in North Carolina for AFDC and Medicaid, Social Security Act, Titles IV-A and XIX, 42 U.S.C. §§601 et seq. and §§1396, et seq., on May 7, 1975. On August 13, 1975, the court granted partial summary judgment in favor of Respondents, finding as a fact, inter alia, that:

> 4. The state is not effectively supervising performance of counties in the taking and processing of applications for AFDC and MA. More particularly, the North Carolina Department of Human Resources has not obtained sufficient information regarding the counties' performance in taking and processing applications. Further, the state has failed to impose sanctions upon those counties which have not substantially complied with state and federal regulations;

concluding as a matter of law, inter alia, that

> 2. Two validly promulgated HEW regulations found at 45 C.F.R. §206.10(a)(3) and (5) require that decisions in AFDC cases be made according to statewide time standards not in excess of 45 days and in MA cases that decisions be made according to statewide time standards not in excess of 45 days, except in MA applications based upon disability, in which case a final eligibility determination must be made no later than 60 days following the date of application.
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> 3. The state has violated HEW regulations found at 45 C.F.R. §206.10(a)(3) and (5) in that evidence demonstrates instances of non-compliance with these regulations attributable to the administrative process.
>
> 5. The state's failure to ensure counties' timely taking and processing of AFDC and MA applications does not satisfy fully the state's responsibility to supervise the administration of the AFDC and MA programs in North Carolina, as required by §402(a)(3) and (5) of Title IV of the Social Security Act, §1902(a)(4) and (5) of Title XIX of the Social Security Act, 45 C.F.R. §205.120, 45 C.F.R. §206.10(a)(12), and N.C.G.S. §108-23.

and ordering that

> 1. The North Carolina Department of Human Resources shall by December 15, 1975, develop and implement a plan for asserting its supervisory role in expediting the taking and processing of public assistance applications on a statewide basis. The state shall, in designing said plan, consider what methods can be employed to expedite the entire application process, which consideration shall include, but not be limited to, the elimination of the requirement of a mandatory home visit in every

> case, the simplification of the existing application forms, whether all counties should be required to write the initial check, whether the recommended staffing ratio should be mandatory, how verification processes can be streamlined, whether a system can be implemented of cross-referencing SSA/SSI/MA applications to avoid continued duplication of efforts in obtaining necessary medical information.
>
> 2. The Department of Human Resources shall by December 15, 1975, file with the court evidence demonstrating the effectiveness of the plan. Upon receipt of the evidence, the court shall then determine whether further proceedings are necessary.

(Joint App., 36-38). From this order Petitioners did not appeal or move for amendments.

The text of the pertinent federal regulations, which have remained unchanged in any material respect since the court's order of August 8, 1975, are codified now for AFDC at 45 C.F.R. §206.10(a)(3)(5) (Pet. App., 47-50) and for Medicaid at 42 C.F.R. §435.91 (Pet. App., 44).[3]

Although the Petitioners did file a paper "plan" for bringing the state into compliance with requirements for taking and processing AFDC and Medicaid applications, the Petitioners never came into compliance. Hence, Respondents initiated a series of motions for further relief which resulted in a series of five additional orders by the court from August 12, 1976 through March 30, 1979. (Joint App., 40-55). Generally, these orders gave further benchmarks and definition to the requirements of the regulations regarding timely processing of applications. In most of the provisions of these orders counsel for Petitioners consented.[4] Suffice it to say that Petitioners did not appeal from or move to amend any factual findings, conclusions of law, or remedies in any one of these orders.

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[3]At the time of the court's order of August 8, 1975, this Medicaid regulation was codified at 45 C.F.R. §206.

[4]The same counsel of record now complains of the requirements of these orders as a "complicated and cumbersome system of procedural checks and benchmarks for judging whether there was good cause for delaying the decision on a person's application beyond the forty-fifth (45th) or sixtieth (60th) day." (Pet., 4).

The last in this series of orders was the injunction of March 30, 1979. (Joint App., 50-55) In unequivocal terms the injunction ordered the petitioners to process all AFDC and Medicaid applications within forty-five (45) days (or sixty [60] days when disability is an issue) unless they are classified as pending "with good cause" according to the explicit definitions set forth in the order. (Joint App., 55).

Incredibly, seven years and nine months after the filing of this action, and in the face of this clear injunction, the Petitioners still failed to comply with the processing requirements of the law. It was fairly disturbing that the state's own statistics admitted that hundreds of applications each month were still pending without "good cause" over the time periods. What was shocking, however, was that the state reported, for example, that as of June 30, 1981, over eighty-five percent (85%) of all pending AFDC applications in the state had been pending forty (40) days[5] or longer, yet the state classified only five and two-tenths percent (5.2%) of these as pending without "good cause" (admitted agency fault). Alexander v. Hill, 549 F.Supp. 1355, 1357 (W.D.N.C. 1982). (Pet. App. B, A-14). It is stipulated that for the period from October 1981 through May 1982, Petitioners reported that thirty-four and seven-tenths percent (34.7%) of all AFDC and Medicaid applications were processed after the 40th day and that, of these, ninety-four percent (94%) were delayed due to client fault. (Joint App., 137). Doubting seriously that ninety-four to ninety-five percent of these thousands of overdue applications could truly be free of all administrative fault, Respondents

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[5]In order to assure that the eligible applicants would receive their initial payments by the 45th day as required by the regulations, Petitioners agreed that in cases which had no decisions of eligibility by the 40th day, it could not be expected that the checks would reach the applicants on time; and, therefore, such cases would be classified as pending with or without good cause on the 40th day.

sought and obtained the court's permission to examine the individual case files in certain key counties that were reporting high incidences of delays but little to no cases overdue without "good cause".

After investigating significant samplings of cases in Mecklenburg, Wake and Stokes counties, Respondents filed their fourth Motion for Further Relief (Joint App., 56-67). On this motion, the court held a hearing on August 2, 1982 and entered the order filed November 4, 1982. Alexander v. Hill, 549 F.Supp. 1355 (W.D.N.C. 1982) (Pet. App. B). In this order, the court found as facts -- which Petitioners do not dispute -- inter alia, that:

> 3. Mecklenburg County has shown a consistent pattern of non-compliance with the court's April 3, 1979 injunction that defendants process AFDC and Medicaid applications within 45 days (or 60 days in cases based on disability). For example, defendants' monthly reports for the months ending October 31, 1981, through May 31, 1982, indicate that between 14.0% and 17.7% of the total AFDC cases and between 9.2% and 18.9% of the total Medicaid cases were overdue without "good cause." See attachments to the Affidavit of Q. Uppercue, dated July 27, 1982.
>
> 4. Both Wake and Stokes Counties submitted inaccurate monthly reports during the period investigated by plaintiffs. Both counties had reported that none of their cases were overdue without good cause for the months in question. The parties stipulated at the hearing, however, that at least 27.6% of the cases pending 40 days or more in Wake County and at least 9% of the cases pending 40 days or more in Stokes County should have been classified as overdue without "good cause."
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> 5. In the counties investigated by plaintiffs, defendants improperly classified as overdue with "good cause" cases in which the following occurred:
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> (a) The county failed to notify the applicant within 20 days of the date of application of the information known to be needed to approve the application;
>
> (b) The county failed to process the application within five working days of the receipt of the last necessary information;
>
> (c) The county failed to document the receipt of the last piece of necessary information;
>
> (d) The county failed to process the application within applicable time limits even though all necessary information was in the file;

(e) The county failed to send information to the State Disability Section within 25 days of the date of application; and

(f) The Medicaid unit of the Disability Determination Section delayed the case beyond the 60-day time limit by waiting to adopt the Social Security unit's disability determination.

6. Defendants' monthly reports indicate that only approximately 2.1% of all cases throughout the state at large were overdue without "good cause" for the months ending October 31, 1981, through May 31, 1982. See Affidavit of Q. Uppercue, dated July 23, 1982, at ¶4. Defendants submitted affidavits from the directors of social services of the 97 counties not investigated by plaintiffs which stated that they knew and understood the processing and reporting requirements of this court's previous orders, and that they were accurately reporting the number of cases that were overdue without "good cause".

The court finds that plaintiffs' investigation raises questions about the accuracy of defendants' monthly reports state-wide. These doubts are compounded by the fact that some counties with a huge number of overdue cases classified only a handful as overdue without "good cause". For example, Cumberland County reported that it was responsible for the delay of only 7 of its 795 overdue AFDC applications and only 13 of its 1,073 overdue Medicaid applications.

Defendants have not investigated the accuracy of reports from any county other than the three investigated by plaintiffs. The court's doubts are not laid to rest by the self-serving form affidavits of the county directors.

8. In summary of the above findings, the court finds that while defendants have made some progress in the eight years since this action commenced, they have still seriously failed to comply with their obligations under federal law and this court's orders.

9. One of the most significant reasons for the delays in processing AFDC and Medicaid applications is the lack of sufficient county staff. State defendants have long been aware of this problem but have failed to take action to remedy it.

Alexander v. Hill, 549 F.Supp. at 1357-58 (Pet. App. B, A-15-18) (emphasis in text by the court).

Upon these findings of fact, the court made the following conclusions of law, in pertinent part:

1. Federal law requires defendants and their local agencies to make prompt decisions on applications for AFDC and Medicaid. Except under circumstances

> beyond defendants' control,[6] such applications must be processed within forty-five (45) days (or within sixty (60) days in cases involving a disability determination). For AFDC cases, these time standards are computed from the date of application to the date the assistance check, or notice of denial of assistance, is mailed to the applicant. 45 C.F.R. §206.10(c)(3)(i) and (ii). For Medicaid cases, these time standards are computed from the date of application to the date the notice of decision is mailed to the applicant. 45 C.F.R. §435.912(a) and (b). The law requires that all applications -- not merely a substantial percentage of them -- be processed within the relevant time limits.
>
> 2. The defendants' failure to insure that all counties timely process AFDC and Medicaid applications violates the court's previous orders and the federal regulations. Defendants have neglected their statutorily imposed and court-ordered duty to supervise the counties' administration of public assistance programs and take corrective action when necessary. 42 C.F.R. §435.905; 45 C.F.R. §§205.120, 206.10(a)(12).
>
> 3. The defendants' submission of inaccurate monthly reports on the counties' processing activity also violates the court's previous orders. Defendants have a duty under the court's orders and federal regulations to stay currently informed of the counties' adherence to the processing standard and defendants have failed to do so. 42 C.F.R. §435.904, 45 C.F.R. §§205.120, 206.10(a)(12).
>
> 4. Defendants' improper classification of applications as overdue with "good cause", as described in ¶5 of the findings of fact, violates ¶¶1-5 of this court's order of March 30, 1979.
>
> 7. The court has the power to impose a remedial money sanction on a state agency in order to ensure compliance by the agency with the court's orders. Hutto v. Finney, 437 U.S. 678, 691 (1978).

Alexander v. Hill, 549 F.Supp. at 1358-59 (Pet. App. B, A-18-20).

Based on the findings of fact and conclusions of law, the court ordered, in pertinent part:

> 9. That defendants, their successors, and all employees and agents of the Department of Human Resources (DHR) hereby continue to be enjoined to process all AFDC and Medicaid applications within forty-five (45) days (or sixty (60) days when disability is an issue), unless they are classified as overdue with defendant according to the terms of this order.

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[6]This clearly shows that the court recognized the exception in the regulations allowed for "acts of God" and "broken equipment" which may excuse delay in processing some cases, contrary to Petitioners' assertion. (Pet., 5).

> 11. That in view of defendants' protracted non-compliance with previous court orders, but principally to insure future compliance, defendants are ordered to pay each applicant who is determined to be eligible for AFDC and Medicaid a remedial fine of fifty dollars ($50.00) for each week or fraction thereof that his or her application was delayed beyond the relevant time limit without "good cause". Defendants will be given ninety (90) days from the date of this order to bring the county departments into compliance with federal law and the terms of this order. At the end of ninety (90) days, defendants are ordered to send each applicant who is sent an initial AFDC check or favorable Medicaid notice of decision a separate check in the amount required by the terms of this paragraph. A decision by defendants that an applicant is not entitled to payment provided for by this paragraph shall be subject to the statutory appeals procedure. See N.C.G.S. §108A-79.

Alexander v. Hill, 549 F.Supp. at 1360-61 (Pet. App. B, A-23-24) (emphasis added).

Petitioners moved to amend certain portions of the relief ordered and moved to amend the court's semantics on one finding of fact (Joint App., 153). The court granted the amendment of the semantics regarding the two "aspects" of the Medicaid applications, granted the amendment regarding the monthly reporting of cases received by the Disability Determination Section, but denied the other requests for relief from the court's remedies. Petitioners appealed on January 10, 1983 (Joint App., 160).

Petitioners did not move to amend any of the substantive findings of fact in the order entered on November 4, 1982. Nor do the Petitioners challenge any of the findings of fact in this petition.

Petitioners moved for a stay of the order before the district court which was denied. Petitioners' motion for a stay was denied also by the court of appeals. Finally, the court of appeals affirmed the district court's orders in all respects. Alexander v. Hill, 707 F.2d 737 (4th Cir. 1983) (Pet. App. A).

SUMMARY OF ARGUMENT

A.

The district court did hold the Petitioners "in contempt," in effect, and had authority to impose the remedial fines.

Although the court did not use the word "contempt", the court did find that the Petitioners had still seriously failed to comply with their obligations under federal law and the court's orders; and the court did resolve the tendered defenses traditionally associated with contempt findings -- substantial compliance, good faith and lack of ambiguity in the injunction -- sufficiently to support contempt remedies against the Petitioners.

Even if the court did not hold Petitioners in contempt expressly, the remedial fines were still appropriate equitable remedies. The court's exercise of discretion in fashioning such remedies is due special deference considering the Petitioners' protracted history of evading the clear requirements of the law and its orders.

Regardless of whether the Petitioners were expressly in contempt or guilty of bad faith, the prospective fines were not barred by the Eleventh Amendment.

Finally, the district court's remedial fines were not a form of "unforeseen and unconventional relief." The relief afforded had been threatened specifically in previous orders of the court and merely followed established precedents from other circuits.

B.

The pertinent provisions of the Social Security Act require, unequivocally, that AFDC and Medicaid be provided to all eligible individuals with "reasonable promptness". Petitioners have cited no legislative history or administrative interpretation of this statute to contradict its plain meaning. "Reasonable promptness" has been clearly defined by regulation to mean 45 days (and 60 days when based on disability), and Petitioners were clearly bound to follow the regulations.

There is no split of authority among the circuit courts of appeals regarding the requirement of the pertinent provisions of the Social Security Act and regulations.

Even if the district court's construction of the Act (in the injunction of March 30, 1979) that AFDC and Medicaid must be provided to all eligible individuals within the prescribed time periods were incorrect at the time, Petitioners failed to appeal that order, and the court's order became the law of the case or res judicata. Petitioners were thus bound to obey the court's order and violated it at their own peril.

Therefore, there are no important questions of law or conflicting decisions among the circuits for this Court to resolve, and the Petition of Certiorari should be denied.

ARGUMENT

A. THE DISTRICT COURT DID HOLD THE PETITIONERS IN CONTEMPT, IN EFFECT, AND HAD AUTHORITY TO IMPOSE THE PROSPECTIVE REMEDIAL FINES.

All material aspects of a civil contempt motion and order were present in this case. The Petitioners were clearly put on notice in the motion for further relief that Respondents contended that they had materially violated the court's injunction and in that sense were "in contempt" of the order. (Joint App., 56-67). Petitioners responded by raising all of the defenses to contempt recognized in the Fourth Circuit: substantial compliance with the order, good faith and reasonable efforts to comply with the order, and ambiguity in the order. Consolidated Coal Co. v. Local 1702, Etc., 683 F.2d 827 (4th Cir. 1982). Petitioners presented numerous affidavits, documents, and live testimony at a hearing where they were accorded due process and representation by counsel. (Joint App., 68-125).

The district court resolved all of the above defenses (to contempt) against the Petitioners, as the findings of fact demonstrate. As to the defense that Petitioners had substantially complied with the injunction, the court found the opposite to be true when it found that Petitioners had "still seriously failed to comply with their obligations under federal law and this court's

orders." Alexander v. Hill, 549 F.Supp. at 1358. (Pet. App. B, A-18). Petitioners failed to prove good faith and reasonable efforts to comply with the court's orders. This is obvious from the high rate of non-compliance in specified counties and the Petitioners' submission of inaccurate reports and misclassified cases from their county agents. Alexander v. Hill, 549 F.Supp. at 1357-58 (Pet. App. B, A-15-18).

In light of the clear findings of multiple, protracted, and inexcusable violations of the court's injunction, it is of no significance that the court spared Petitioners the additional indignity of being publicly labeled contemptuous. As the court of appeals amply stated, "words are possessed of no magical properties, incantations should not decide cases, and the lack of finding of contempt or bad faith should not preclude exercise of inherent equitable powers to achieve fair remedial results." Alexander v. Hill, 707 F.2d 789, 783 (4th Cir. 1982) (Pet. App. A, A-4). When asked at oral argument before the Fourth Circuit what substantive difference it would have made in the district court's decision if the court had added the word "contempt", Petitioners could offer none. Petitioners' Petition still offers none.

In a case cited by the Petitioners, McComb v. Jacksonville Paper Co., 336 U.S. 187 (1948), the failure of the district court to employ the word "contempt" in its findings was not dispositive of whether the court should have or could have granted equitable relief in the form of money payments to the aggrieved parties. In McComb, the district court had found violations of the provisions of its earlier injunction but refused to call this disobedience "contempt" or to order the payment of unpaid wages due the affected employees because it believed that a showing of a "wilful" violation of a specific provision of the injunction was necessary. 336 U.S. at 189-190. In reversing the district court, this Court held that violations of the injunction

were sufficient, without a finding of willfulness, to allow a sanction to enforce compliance with the order or compensate for damages sustained by reason of non-compliance. 336 U.S. at 191. The court concluded with words that would serve as a fitting epitaph to the case at bar:

> If the court is powerless to require the prescribed payments to be made, it has lost the most effective sanction for its decree and a premium has been placed on violations.... It is the power of the court with which we are dealing -- the power of the court to enforce compliance with the injunction which the Act authorizes, which the court has issued, and which respondents have long disobeyed.

336 U.S. at 194-195.

The absence of express findings of "contempt" or "bad faith" did not preclude similar equitable relief in the only cases truly analogous to the case at bar. Class v. Norton, 505 F.2d 123 (2nd Cir. 1974); Rodriguez v. Swank, 496 F.2d 1110 (7th Cir. 1974). Petitioners omitted discussion of these cases from their Petition.

In Class v. Norton, the district court's first order (1972) required the state commissioner of welfare, inter alia, to comply with the applicable federal regulations by mailing the assistance checks within thirty (30) days of the date of application and to find presumptively eligible all applicants whose applications were pending more than 30 days. Class v. Norton, 376 F.Supp. 496, 497 (D.Conn. 1974).[7] The court declined to find the defendant in contempt and made no finding of bad faith. Rather, the court found "ineffective implementation" of the court's prior orders. 376 F.Supp. at 499. Drawing on "the 'broad discretionary power' of the trial court to fashion equitable remedies which are 'a special blend of what is necessary, what is fair, and what is workable[,]' Lemon v. Kurtzman, 411 U.S. 192, 200 ...," the court ordered, inter alia, the defendant to assign at least four addi-

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[7]Until August 15, 1973, the federal regulations required processing within 30 days. Id.

tional workers to the provision of retroactive benefits to all inactive cases, the defendant to make extensive monthly reports, and the defendant, both in his official capacity and personal capacity, to pay costs and attorney fees in an amount of $1,000.00 to plaintiffs' counsel. 376 F.Supp. at 501-503. The $1,000.00 was in the nature of a remedial fine since the Civil Rights Attorney Fees Awards Act of 1976, 42 U.S.C. §1988, was not yet in existence.

Defendant appealed, challenging the award of costs and attorneys' fees as barred by the Eleventh Amendment and as an improper equitable remedy. Class v. Norton, 505 F.2d at 126-127. On the Eleventh Amendment question, the Second Circuit construed the ruling in Edelman v. Jordan, 415 U.S. 651 (1974), to not bar the fees because they were "ancillary effects" on the state treasury deriving from compliance with prospective orders of a federal court. 505 F.2d at 126. In finding that the Eleventh Amendment did not immunize the defendant in his official capacity, the court underlined "the forward-looking, deterrent nature of this award." 505 F.2d at 127. Thus, contrary to Petitioners' suggestion here (Pet., 8-9), it is the prospective nature of the relief rather than the wording of the underlying violations of the law that determines the Eleventh Amendment bar. See Milliken v. Bradley, 433 U.S. 267, 289 (1977).

As to the propriety of the fees as an equitable remedy, the Second Circuit recognized the remedy as an extraordinary measure that has been "assimilated to bad faith", but agreed that the evidence marshalled by the court supported such a finding. 505 F.2d at 127. It is noteworthy that the Second Circuit upheld this strong remedy despite the district court's clear statement that it did not infer any deliberate design to circumvent the court's orders by the defendants. 376 F.Supp. 500. Likewise, the court here did not expressly infer a deliberate design by the

state defendants to subvert the court's orders, but the court did recognize that defendants had seriously failed to comply with their obligations after having long been aware of the problem.

The other major case, with a history of violations much shorter than those of the case at bar, is Rodriguez v. Swank, 496 F.2d 1110 (7th Cir. 1974). At the district court level, it was known as Rodriguez v. Weaver, No. 69 C 2615 (N.D.Ill. Nov. 9, 1972) (Copy attached hereto as Appendix A). In Rodriguez the district court had ordered, in 1970, the Illinois Department of Public Aid to process all AFDC applications within 30 days from the time they were filed. (Appendix A, p. 1). In a supplemental order in 1972, the court stated that any Illinois county that failed to process applications within 30 days would forfeit federal AFDC funds for the 30-day period. (Id.)

The state department remained out of compliance but had improved greatly. State-wide, the department had achieved about ninety-seven percent (97%) compliance, although one county still showed about seven percent (7%) of applications being processed late. (App. A, pp. 1-3). The defendants suggested, as have Petitioners here, that one hundred percent (100%) compliance is probably impossible. (App. A, p. 3). In response, the court said:

> While there is little evidence to support such a proposition, in view of the fact that the department has been permitted to adjust its statistics to account for all processing failures beyond its control, the assertion begs the question even if it were accepted as being true. That is, a family which has been denied timely assistance in violation of federal law will certainly suffer some sort of mental and/or physical damage. Since a right is virtually meaningless without a remedy to enforce it, some remedy must be established in order to protect those persons whose payments are delayed beyond the thirty-day period without their fault.

(App. A, pp. 3-4).

In searching for the proper remedy, the court expressly declined a finding of contempt (App. A, p. 3), stated that the

department's significant progress demonstrated "good faith" (App. A, p. 7), and rejected plaintiffs' request for presumptive eligibility (App. A, p. 5). Instead, the court chose to award prospective coercive and compensatory damages (similar in form to the kind at issue here) to those applicants who are declared to be eligible for AFDC after the 30-day period -- a pre-determined sum of $100.00 damages in addition to the statutory benefits. (App. A, p. 6). The court's rationale was essentially the same as the district court's in the case at bar:

> In allowing thirty days for the processing of applications, Congress, through its delegate, HEW, undoubtedly decided that at least some period of delay is administratively necessary because of the heavy volume of work involved. The system is forced by necessity to tolerate such delays. By necessary implication, however, a delay of longer than thirty days is unreasonable and those who are forced to suffer the additional wait, without fault on their part, should be deemed to have incurred compensable damages. Otherwise, the state would not have any incentive to fully comply with the law, unless the court resorted to remedys already noted as being overly harsh for such marginal violations.

(App. A, pp. 6-7) (emphasis added). Also, like the order at issue here, the court granted the defendants three months to be in full compliance or begin paying the remedial fines. (App. A, p. 8).

In affirming the court's remedies completely, the Seventh Circuit noted that the "...power to order compliance with federal regulations would be meaningless if the injunction were unenforceable." Rodriguez v. Swank, 496 F.2d at 1112-1113 (7th Cir. 1974). In rejecting the defendant's argument that the Eleventh Amendment barred such relief, the court stated that neither the Amendment nor the Social Security Act limited a federal court of equity to the inflexible remedy of forfeiture of federal funds. Rodriguez, 496 F.2d at 1113. Finally, the court held that the remedy was well within the court's discretion to serve either or both of two purposes:

> "...to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained." United States v. Mine

> Workers, 330 U.S. 258., 303-304, 67 S.Ct. 677, 701, 91 L.Ed. 884. The order here serves both purposes, but primarily the coercive one. Money payments contingent on non-compliance are a traditional means of enforcing injunctions.

Rodriguez, 496 F.2d at 1113 (emphasis added).

These decisions of the Second and Seventh Circuits were ample precedents for the district court and Fourth Circuit decisions in the case at bar. Judge McMillan's order clearly was designed to coerce Petitioners to process applications timely so that destitute people would not have to be totally without money and medical care for more than forty-five (45) days. The court expressly provided that the remedy's purpose was "principally to insure future compliance" with the court's orders, one of the well-established purposes of civil fines. United States v. Mine Workers, 330 U.S. 258, 303-304 (1947).

Thus, it cannot be fairly argued that the decision in this case produced any "unforeseen and unconventional relief." (Pet. 9).

B. THE SOCIAL SECURITY ACT CLEARLY REQUIRES THAT AFDC AND MEDICAID BE PROVIDED TO ALL ELIGIBLE INDIVIDUALS WITH REASONABLE PROMPTNESS, AND THERE IS NO SPLIT OF AUTHORITY AMONG THE CIRCUITS AS TO THIS REQUIREMENT; BUT EVEN IF THE ACT DID NOT REQUIRE IT, THE COURT'S INJUNCTION REQUIRED 100% COMPLIANCE, AND PETITIONERS WERE BOUND TO OBEY THE INJUNCTION.

The pertinent sections of the Social Security Act plainly require that AFDC and Medicaid "shall be furnished with reasonable promptness to all individuals." 42 U.S.C. §602(a)(10) (Pet. App., 29-32); 42 U.S.C. §1396a(8) (Pet. App. D, A-37-40). When the terms of a statute are unambiguous, judicial inquiry is complete except in rare and exceptional circumstances. Rubin v. United States, 449 U.S. 424, 430 (1981). Here, no such rare and exceptional circumstances exist, nor have Petitioners tendered any references to legislative history to contradict the statute's plain words. As the Fourth Circuit observed succinctly, the law itself compels 100% compliance. Alexander v. Hill, 707 F.2d at

784. (Pet. App. A, A-7); 549 F.Supp. at 1359 (Pet. App. B, A-19).

The statute having established that all applicants are entitled to "reasonable promptness", Petitioners' argument for a license to process some applications late would necessarily rest on the lack of precision in the words "reasonable promptness". However, valid regulations that have been in force since before this litigation began have precisely defined "reasonable promptness" as 45 days and 60 days (for cases based on disability claims) respectively. 45 C.F.R. §206.10(c)(3) and 42 C.F.R. §435.911. Having chosen to participate in these joint federal-state programs, Petitioners are bound to follow the federal regulations. King v. Smith, 392 U.S. 309, 317 (1968).

Petitioners' claim that there is a serious split of authority among the circuits is disingenuous. There is no disagreement among the circuits that have actually had to construe the same provisions of the Social Security Act and regulations that are involved here. Every other federal court has rejected pleas of state bureaucrats that they had insufficient staff or it was administratively difficult to comply with the processing requirements. Class v. Norton, 376 F.Supp. 496, 498-500 (D.Conn. 1974); aff'd 505 F.2d 123 (2nd Cir. 1974); Rodriquez v. Weaver, No. 69 C 2615 (N.D.Ill., Nov. 9, 1972) (App. A), aff'd Rodriquez v. Swank, 496 F.2d 1110 (7th Cir. 1974); Smith v. Miller, 665 F.2d 172, 175 (7th Cir. 1981); Like v. Carter, 448 F.2d 798, 803-4 (8th Cir. 1971).

Petitioners' reliance on Shands v. Tull, 602 F.2d 1156 (3rd Cir. 1979) is completely misplaced. First, in Shands, the court was construing a different federal regulation, 45 C.F.R. §205.10(16) (1978), which related to timely determination of administrative appeals by persons already found ineligible. In Shands, the court was determining the degree of performance

required for the first time. Here, however, in 1982, it was no longer an open legal question before the district court as to whether the Petitioners were required to process all applications in a timely manner. The injunction of March 30, 1979 had clearly required such performance, and Petitioners were bound to obey that order until it was reversed by appropriate judicial proceedings. Walker v. City of Birmingham, 388 U.S. 307, 314 (1967); United States v. United Mine Workers of America, 330 U.S. 258, 293-4 (1947); Class v. Norton, 507 F.2d 1058, 1060 (2nd Cir. 1974).

Petitioners' reliance on Fortin v. Commissioner of Mass. Dept. of Public Welfare, 692 F.2d 790 (1st Cir. 1982), is similarly misplaced. The court in Fortin did not construe the act and regulations to require less than full performance. 692 F.2d at 795, n. 6. Rather, in review of the state's performance under a consent decree that required the state to process all AFDC applications and mail checks to those eligible within thirty days, the district court found substantial noncompliance in a civil contempt proceeding, which was affirmed totally by the First Circuit. 692 F.2d at 793-796. In that respect, the First Circuit was completely consistent with the Fourth Circuit's affirmance of the district court's finding, in effect, of substantial and protracted noncompliance with its previous orders. Alexander v. Hill, 549 F.Supp. at 1358, para. 8, (Pet. App. B, A-18) and at 1361, para. 11 (Pet. App. B, A-14); 707 F.2d at 782-3 (Pet. App. A, A-4 and 5).

Indeed, Petitioners here, as the defendants in Fortin, had no standing to claim "substantial compliance" with the court's injunction. In both cases, the state's actual degree of performance was suspect because it was based upon inaccurate reports and misclassified cases. Compare Alexander v. Hill, 549 F.Supp. at 1357-58 (Pet. App. B, A-15-17) with Fortin, 692 F.2d at 795. There being no evidence of "substantial compliance" with the

court's injunction or the plain requirements of the statute and regulations, this Court has no actual "substantial compliance" issue to review. This Court must deal with the case at hand and not with imaginary ones. Yazoo & Mississippi Valley R.R. v. Jackson Vinegar Co., 226 U.S. 217 (1912); City of Los Angeles v. Lyons, ___ U.S. ___, 103 S.Ct. 1660 (1983).

Finally, Petitioners suggest that the provisions of 42 U.S.C. §604(a)(2) and §1396(c)(2) preclude the district court from providing Respondents the relief it did in this case. (Pet., 11) These provisions of the Social Security Act authorize the Secretary of Health and Human Services to discontinue furnishing federal funds to a state if the Secretary finds that there is a failure to comply substantially with the requirements of the particular program.

These provisions are different, however, from the provisions of 42 U.S.C. §602(a)(10) and §1396(a)(8) and the Secretary's specific regulatory definitions of "reasonable promptness". While the provisions which Petitioners cite give the Secretary wide discretion in judging and sanctioning a state's noncompliance, the latter cited provisions of the Act, on which the district court relied, set forth Petitioners' specific obligations to Respondents. The district court's sanctions for Petitioners' protracted violations of these obligations were entirely appropriate under these more specific provisions regardless of the availability of the separate sanction which could have been exercised by the Secretary.

Stated another way, the existence of this other possible sanction (the Secretary's withholding of funds) for the Petitioners' protracted violations of their obligations to Respondents (under 42 U.S.C. §604(a)(10) and §1396(a)(8) and under the Secretary's specific definitions of reasonable promptness) would not have made the court's injunction to process all applications in a timely manner improper in 1979. Fortin, 692 F.2d at 796.

More importantly, the existence of this alternative sanction does not excuse Petitioners' violations of the 1979 injunction!

CONCLUSION

With Job-like patience, the district court has repeatedly tried to bring Petitioners into compliance with mandatory laws that are clear. The series of its orders demonstrates considerable restraint in not ordering presumptive eligibility (as in Class v. Norton), in not ordering specific numbers and assignments of personnel, and in not appointing a receiver. After eight years of continuous noncompliance, the court used the least intrusive but necessary remedy: a fiscal incentive for Petitioners to comply which also nominally compensates helpless people, mostly children, for real harms. No other federal court in the United States in similar cases waited as long as Judge McMillan to use such a remedy.

As Chief Justice Burger has observed at least twice, "[i]n shaping equity decrees, the trial court is vested with broad discretionary power; appellate review is correspondingly narrow. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 15, 27 n. 10, 91 S.Ct. 1267, 1275, 1281, 28 L.Ed.2d 554 (1971)." Lemon v. Kurtzman, 411 U.S. 192, 200 (1973). In complex cases such as this one, with a history of senseless, protracted violations of the law, the trial court's exercise of discretion is due special deference. Hutto v. Finney, 437 U.S. 678, 688 (1978).

Petitioners never confused their basic obligation to comply fully with the law until the court put a fiscal sanction on their defaults. They decry the court's remedy mainly because it appears inescapable. When the court invited them to draft less offensive but meaningful remedies, Petitioners had none. (Joint App., 157).

Thus, Petitioners have sought reprieve from this Court on a most thin and ironic reed: Judge McMillan cannot make us pay for our sins because he was too easy on us -- he did not call us contemptuous. The Petitioners' semantic argument for reversal exalts form over substance in the extreme. It invites a travesty of justice that will leave hundreds of people helpless. It also lacks any cited authority.

Finally, Petitioners have failed to establish any of the special and important reasons for granting review of the orders below as required by Rule 17 of the Supreme Court Rules.

For all of the foregoing reasons, Respondents respectfully request this Court to deny the Petition for Certiorari in its entirety.

Respectfully submitted this 1st day of September, 1983.

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APPENDIX A (8 pages)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GLADYS RODRIGUEZ, et al., Plaintiffs,	)	File: Honorable Crowley
-vs-	)	NO. 69 C 2615
EDWARD T. WEAVER, etc., et al., Defendants.	)	

MEMORANDUM OPINION

On October 29, 1970, this court ordered the Illinois Department of Public Aid ("the Department") to process all AFDC applications within thirty days from the time they are filed. A supplemental order was entered on February 9, 1972 ("the February order") for the purpose of enforcing immediate and full compliance with the order of October 29, 1970 ("the October order"). The supplemental order stated that for the month of April, 1972, any Illinois county that failed to process at least 90% of all pending AFDC applications within thirty days would forfeit federal AFDC funds for that thirty day period, i.e. the month of April. The same sanction was ordered to apply to each subsequent month, but the requirement was raised to 95%.

Since that time it is apparent that the efforts and/or capabilities of the Department have greatly improved. In fact, for the month of June, 1972, the Department achieved 97.2% compliance with the October order while the same statistic exceed-

the month of August. Furthermore, only a few isolat-cies remained out of compliance with the February order nat time.

There are two motions presently pending before the court. First, defendant has asked that, in consideration of the statistical reports filed with the court for the months of June, July and August, 1972, the February order be suspended with respect to the months of May through July, 1972. Plaintiff has agreed that with the exception of Will County, it would be too drastic a measure to cut off federal AFDC funds to the counties that failed to comply with the February order during those months because so few applications were involved.[1] Plaintiffs have, however, moved that Will County be adjudged in contempt of the February order, and that the county be ordered to forfeit federal AFDC funds for the months of May and June, 1972.

Will County, although inexplicably out of compliance with the court's February order during May and June, 1972, did substantially comply with it, having processed over 93% of the applications filed within the thirty-day period for both months.

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1 In those counties, the failure to process one or two applications within the thirty day period would put the county out of compliance with the February order. The plaintiff has, of course, asked that all members of the plaintiff class who have not had their applications processed within thirty days receive compensatory damages. That question will be discusse infra.

More importantly, it has been represented to the court that Will County has been in compliance with the February order since July and is expected to continue to improve its performance. Furthermore, the ultimate effect of holding the Will County department of public aid in contempt, in the absence of compelling policy reasons, may be to damage rather than protect the interests of members of the plaintiff class in that county. Therefore, the court believes that enforcement of its February order against Will County for the months of May and June, 1972, would be unduly harsh under the circumstances and would not serve to further the general purpose of that order.

A more troublesome issue is raised by plaintiffs' motion for supplemental remedies for noncompliance with the October order. The central purpose of this lawsuit and the October order should not be obscured by the February order. This court has not lost sight of the fact that compliance with federal law does not mean 95% or even 98% compliance. From the time the October order was entered, it has been the intention of this court to see that federal law is fully complied with. The February order was little more than an interim measure designed to accelerate the achievement of that goal.

The Department has suggested that 100% compliance is probably impossible. While there is little evidence to support such a proposition, in view of the fact that the Department has been permitted to adjust its statistics to account for all

processing failures beyond its control, the assertion begs the question even if it were accepted as being true. That is, a family which has been denied timely assistance in violation of federal law will certainly suffer some sort of mental and/or physical damage. Since a right is virtually meaningless without a remedy to enforce it, some remedy must be established in order to protect those persons whose payments are delayed beyond the thirty-day period without their fault.

In this case, complete forfeiture of federal funds would be too harsh a remedy to impose upon the state for marginal violations, i.e. 2-3% of the cases. The financial pressure it would impose upon the entire state welfare system would be too great and the recipients of the benefits would very likely be hurt rather than helped. Yet, those families comprising the 2-3% are entitled to some form of remedy.

The plaintiffs have offered two possible solutions to the problem. First, plaintiffs suggest that rather than attempting to calculate and dispense compensatory damages, the remedy of "presumptive eligibility" should be adopted for the purpose of completely eliminating any delays in the receipt of benefits more than thirty days after an application is filed. Under the presumptive eligibility concept, any applicants who have had an unprocessed AFDC application on file for thirty days would be "presumed" eligible and would immediately be mailed an assistance check. This remedy was adopted in Class v. White, ___ F.Supp. ____ (D.Conn. 1972).

While the court agrees that payment delays of longer than thirty days would be eliminated if such a remedy were ordered, certain other factors weigh heavily against resorting to such a plan. First, presumptive eligibility, as a practical matter, would mean that welfare funds would almost certainly be received by those ultimately found to be ineligib to receive them. Once the funds are paid out they would be lo to the welfare system because of the impracticality of recovering them. Moreover, presumptive eligibility results in what the court views as impermissible discrimination by creating two classes of ineligible AFDC applicants: those who are declared ineligible within thirty days and receive no assistance and those who are more fortunate and are "presumed" eligible simply because more than thirty days have passed since the filing of their applications. Plaintiff has pointed out that presumptive eligibility is employed by the Department for certain categories of emergency assistance. However, no showing has been made that discrimination within the class of those subsequently determined to be ineligible results. Hence, the court believes that the element of certainty built into a system of presumptive eligibility is counterbalanced by elements of waste and unfairness that render such a plan unacceptable.

The other alternative is compensatory damages. The law is clear that monetary damages are appropriate in cases of civil contempt to enforce compliance with court orders and/or statutes. McComb v. Jacksonville Paper Co., 336 U.S. 187, 191

(1949). Moreover, the fact that the exact measure of damages is difficult to set, does not preclude recovery if it is certai that defendant's conduct has caused the damage. Story Parchment Co. v. Paterson Co., 282 U.S. 555, 562-563 (1931).

Plaintiffs suggest that the court simply estimate the amount of compensatory damages likely to be suffered by those w must wait longer than thirty days to have their applications processed and automatically award them that amount. That is, all those applicants who are declared to be eligible for AFDC assist ance after the thirty-day period will receive in addition to all the statutory benefits they are entitled to a pre-determined sum of compensatory damages. One could, of course, argue that there is no particular magic to the thirty-day cut-off because a family having to wait thirty days for benefits may be just as damaged as a family that has had to wait thirty-one days. However, Congress has clearly determined otherwise. In allowing thirty days for the processing of applications, Congress, throug its delegate HEW, undoubtedly decided that at least some period of delay is administratively necessary because of the heavy volume of work involved. The system is forced by necessity to tolerate such delays. By necessary implication, however, a delay of longer than thirty days is unreasonable and those who are forced to suffer the additional wait, without fault on their part, should be deemed to have incurred compensable damages. Otherwise, the state would not have any incentive to fully compl with the law, unless the court resorted to remedies already note

as being overly harsh for such marginal violations. According the pre-determined damage remedy appears to be the most sensib and practical solution to the problem.

Plaintiffs assert that $100. would be a fair and reasonable figure. Subject to the limitations to be outlined, infra, I agree.[2]

Plaintiffs argue that compensatory damages should be made retroactive to October 29, 1970, or at least to February 9 1972. While this court has already stated its position that th Department has an obligation under federal law to process all AFDC applications within thirty days from the time they are fil it is recognized that the Department has made significant progr in correcting a deplorable situation and has acted in good fait Moreover, it would logically be contrary to the February order to hold the defendant in contempt after February 9, 1972, even though the court's order has been substantially and satisfactor complied with. Also, for this court to levy a large lump sum retroactive damage liability against the Department at this poi would be to risk financial disaster for the state welfare syste in the immediate future. It would be imprudent to jeopardize t complete and continuous flow of desperately needed welfare fund by assessing retroactive damages against an already financially

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2 The court has rejected the idea of a "sliding scale" of damages determined by the number of days by which the thirty day limit is exceeded because it would result in an unwarrant ed administrative burden. The court's purpose here is to for increased efficiency, not add to the administrative duties al ready present.

and administratively overburdened state department of public aid. Accordingly, it appears that the most sensible solution to the problem is the institution of the foregoing compensator damage plan prospectively from February 1, 1973. However, aft February 1, 1973, any AFDC application pending more than thirt days, through no fault of the applicant, and subsequently act- ed upon favorably, will entitle the applicant to $100. compens tory damages in addition to the regular benefits received.

At this point I wish to re-emphasize that the February order will remain in full force and effect, and that the suspe sion allowed herein only applies to the months so specified. The imposition of the supplementary remedy beginning February 1 1973, is not intended by this court to vitiate or alter the Department's obligations under the February order.

ENTER:

BERNARD M. DECKER

United States District Judge.

DATED: November 9, 1972.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served upon

William Woodward Webb
411 Fayetteville Street Mall
P. O. Box 2387
Raleigh, NC 27602

attorney for petitioners in this matter, copy of the attached RESPONDENTS' BRIEF IN OPPOSITION AND NOTICE OF APPEARANCE OF COUNSEL, by deposit into the United States Postal Service as required by Rule 5(b), N.C.G.S. 1A-1.

Dated: September 1, 1983

Theodore O. Fillette, III.

Theodore O. Fillette, III
Attorney for Respondents
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Suite 600
Charlotte, North Carolina 28202
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ORIGINAL

No. 83-163

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

JOHN M. SYRIA, DIRECTOR, DIVISION OF SOCIAL SERVICES, NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES, ET AL., PETITIONERS,

v.

CLARA ALEXANDER, ET AL., RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENT'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 83-163

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

JOHN M. SYRIA, DIRECTOR, DIVISION OF SOCIAL SERVICES, NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES, ET AL., PETITIONERS,

v.

CLARA ALEXANDER, ET AL., RESPONDENTS

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

NOW COME Clara Alexander and Carmen Nelson Roddey, by and through their attorney, pursuant to 28 U.S.C. §1915 and Rule 46 of the Supreme Court Rules, and move the Court for leave to proceed in forma pauperis as Respondents to the Petition for Certiorari in the above-styled case.

In support of this motion Respondents state that they were allowed to proceed in forma pauperis in the proceedings below upon motion and order granted by the district court, that by reason for their impoverished conditions they are unable to pay the costs of or give security for printing the Brief in Opposition to the aforesaid Petition and all other costs and fees required by law (reference is hereby made to the supporting affidavits of Respondents which are attached), and further state that they believe that they are entitled to redress in the form of having the judgments below not reviewed, reversed, or vacated.

Respondents tender to the Court herewith Respondents' Brief in Opposition to the Petition for Certiorari.

Respectfully submitted, this 1st day of September, 1983.

Theodore O. Fillette, III

Theodore O. Fillette, III
Attorney for Respondents
Legal Services of Southern Piedmont, Inc.
951 S. Independence Boulevard Suite 600
Charlotte, North Carolina 28202
(704) 376-1608

SUPREME COURT OF THE UNITED STATES

John M. Syria, Director, Division
of Social Services, etc., et al.,

Petitioner

vs. No.: 83-163

Clara Alexander, et al.,

Respondent.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL
IN FORMA PAUPERIS

I, Clara Alexander, being first duly sworn, depose and say that I am one of the Respondents in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs, print the brief in opposition to the petition for certiorari, or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; and that I believe I am entitled to redress.

I further swear that the responses that I have made to the questions and instructions below relating to my ability to pay the costs involved in the appeal are true.

1. Are you presently employed?

   Answer: "No. I have not been employed or received any salary or wages any time within the past two years."

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interests, dividends, or other source?

   Answer: "Yes. I receive rent payments from my sub-tenant in the amount of $35.00 per week, but this income has caused my AFDC check to be reduced to $62.00 per month."

3. Do you own any cash or checking or savings account?

   Answer: "No."

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothings)?

   Answer: "No."

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Answer: 1. Charles Jones, son; 2. Ikeshia Alexander, daughter.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties of perjury.

Clara L. Alexander
Clara Alexander

Sworn to and subscribed before me this
20th day of August, 1983.

[illegible]
NOTARY PUBLIC

My Commission Expires: 12-13-85

SUPREME COURT OF THE UNITED STATES

John M. Syria, Director, Division
of Social Services, etc., et al.,

Petitioner

vs. No.: 83-163

Clara Alexander, et al.,

Respondent.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL
IN FORMA PAUPERIS

I, Carmen Nelson Roddey, being first duly sworn, depose and say that I am one of the Respondents in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs, print the brief in opposition to the petition for certiorari, or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; and that I believe I am entitled to redress.

I further swear that the responses that I have made to the questions and instructions below relating to my ability to pay the costs involved in the appeal are true.

1. Are you presently employed?

   Answer: "No. I have not been employed or received any salary or wages any time within the last twelve months, and I cannot recall the date on which I was last employed or the salary I received."

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interests, dividends, or other source?

   Answer: "No."

3. Do you own any cash or checking or savings account?

   Answer: "Yes, but the checking account is a joint account with my husband, and the total value of the checking account at this time is $ 8.00 ."

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothings)?

Answer: "No."

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Answer: 1. Jonathon McCorkle, son; 2. April Nelson, daughter

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties of perjury.

Carmen Nelson Roddey
Carmen Nelson Roddey

Sworn to and subscribed before me this
29th day of August, 1983.

NOTARY PUBLIC

My Commission Expires: 12-13-85

CERTIFICATE OF SERVICE

I hereby certify that I have this day served upon

William Woodward Webb
411 Fayetteville Street Mall
P. O. Box 2387
Raleigh, NC 27602

attorney for petitioners in this matter, copy of the attached RESPONDENTS' MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS, by deposit into the United States Postal Service as required by Rule 5(b), N.C.G.S. 1A-1.

Dated: September 1, 1983

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